

Questions and Answers/October 7, 2010, Webinar

1. What delivery code should one use when reporting a special education teacher who teaches a transitions class where the main focus is on transition services and resources but the special education teacher does give the grade? Would it be IG or SC?

Answer: If the special education teacher is giving a grade in a non-core content area, use 195010 with the SC delivery system.

2. As we are reviewing the Standards and Indicators Manual for the Special Education Process, we could not locate a standard to meet the following requirement in the State Plan for the Evaluation Report when a student has been evaluated for a specific learning disability: each team member shall certify in writing whether the report reflects his/her conclusion; if it does not reflect his/her conclusion, the team member must submit a separate statement presenting his/her conclusions. I am assuming it is still an expectation. Is that correct?

Answer: yes, see standard 1400.50.b

3. In the Standards and Indicators manual (200.90.a./200.90.b.) The Area(s) to be evaluated and tests/assessments to be used indicates that the documentation for meeting this standard is the Notice of Action. Does the Description of Known Areas to be Assessed meet this standard or does the notice of action have to include the information as well?

Answer: If consent is required for assessment the notice of action must describe the areas to be assessed, and the tests to be used, if known. You can include this information in the body of the NOA or include it in the Missouri state sample form for documenting this with the NOA.

4. What is DESE's take/recommendation regarding the inclusion of the student's disability in the PLAAFP?

Answer: local decision

5. If a student with disabilities has behaviors that are not related to the disability, should the statement on the Special Considerations "Does the student exhibit behaviors that impede his/her learning or that of others?" be marked as Yes or No? If a behavior support plan is written for this student, would it be expected to be attached to the IEP (again, the team determined these behaviors are not related to the disability)? And, finally, the way the "yes" is worded, it states the inclusion of positive behavior interventions and supports must be considered by the IEP team; however, we have been instructed that if "yes" is marked, we are required to include a BIP. Is this accurate?

Answer: The behaviors need to be addressed whether they are related to the disability or not; and certainly you can document in the IEP whether you have determined them related or not. There is no requirement to develop a Behavior Intervention Plan.

However, if one is needed it must be a part of the IEP. The requirement is to consider positive behavior interventions/strategies if the student's behavior is impeding the learning of himself or others.

6. If a student assaults a teacher and/or another student so severely that the injury necessitates treatment in the emergency room, is this considered severe bodily harm and can the student be suspended 45 days without an expedited due process hearing even though the behavior is a manifestation of the student's disability?

Student is suspended for 3 days, has another incident, is suspended for 4 days, another incident, suspended 5 days? On which day do we need to do the Manifestation Determination? Do we need to do the Manifestation Determination before the 5 day suspension? If it is a manifestation of student's disability, what would be our next step? If it is not a manifestation of student's disability, when do we need to send the Notice of Action for change of placement?

If we suspend a student for 10 days with a plan to hold a manifestation determination on the 10th day and possibly suspend for another 45 days, but on the 5th day of suspension, student is placed in alternative setting by juvenile, what is our obligation? What type of paperwork do we need to do?

Answer: an injury that necessitates an emergency room does not necessarily meet the definition of serious bodily harm that would trigger the 45 school day interim placement.

18 USC 1365 (3) the term "serious bodily injury" means bodily injury which involves—
(A) a substantial risk of death;
(B) extreme physical pain;
(C) protracted and obvious disfigurement; or
(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

As distinguished from

(4) the term "bodily injury" means—
(A) a cut, abrasion, bruise, burn, or disfigurement;
(B) physical pain;
(C) illness;
(D) impairment of the function of a bodily member, organ, or mental faculty; or
(E) any other injury to the body, no matter how temporary.

You will want to discuss the injury with your school district lawyer to determine the options/remedies/and best strategy.

As far as a manifestation determination, suspensions which cumulatively equal 10 days are unlikely to amount to a change in placement that would trigger a manifestation determination. Suspensions which exceed 10 days cumulatively are only treated as a change of placement requiring a manifestation determination if a pattern of suspension is

created. To determine if a pattern is created requires analysis of several factors: duration of each suspension, proximity of each suspension to one another, total exclusion from school for the school year that results, and whether the behavior for each suspension creates a pattern.

For a student who is short-term suspended, but for whom there is a pending recommendation of long-term suspension, and who is removed by the juvenile authorities, you may or may not want to proceed with the process for long-term suspension. It depends on whether you expect he will be returning to the district. You will want to consult with your school district lawyer to discuss the options.

7. Our District is moving to a large co-teaching model. We realize, within each co-taught class, our students are receiving specialized instruction for only a portion of the class period.

Answer: In co-teaching the special education teacher needs to be in the classroom for the whole class period. They can't "co-teach" if one leaves and is not available to "teach." Put the number of class minutes (usually 50 minutes) on the Services Summary for each student whose IEP team has determined they need a co-teaching setting for that area of their disability. Please consult with the special education consultant at the Regional Professional development Center for more information; there is co-teaching training available through the RPDCs. Keep in mind that CWC and co-teaching are the same concept. So whether they say on the IEP that it is CWC or co-teaching, they need to put on the services summary the amount of time that the IEP team has determined that the child needs special education support available to them in the regular classroom and that is generally done for the entire class period.

8. Please clarify the transportation issue on children who are privately placed. If a public school's attorney tells the public school to refuse to transport privately placed students, are they out of compliance? Also, if the transportation is figured into proportionate share, is that per pupil. For example, if there are 5 children in a private school and all 5 need speech services at the public school, do you figure the amount per student? To clarify that example, say the proportionate share for one child is \$25.00, would each of the children's proportionate share be \$25.00 or would you divide the \$25.00 up between the 5 students?

Answer: A school district can't refuse to provide transportation to a private school student, if that private school student requires the transportation to access the special education services the district is providing under a Services Plan in order to meet the school district's proportionate share requirement. However, the transportation cost does count toward your proportionate share. The proportionate share expenditure calculation is for the total amount you must spend on the private school population – not on individual children.

9. Can a district send a speech therapist or special educator to the homeschooled child, and count the mileage cost as part of the proportionate share? That would be cheaper than sending a bus.

Answer: Yes.

10. Where would I find a list of errors which absolutely MUST be changed that do not meet Standard /Indicators. I have found various IEP's with 12-30 errors each.

Answer: The general rule requires IEP meeting/revision. However, some errors do not warrant this because there would be no context to make that change. For example, if the student has moved out of the district. There is no magic list; however, if you want to run a list of examples of errors by us, send it to me or our compliance section and we will review and give you feedback.

11. When a parent is homeschooling their child, can they provide those services for another homeschooled child not their own?

Answer: I don't think there is anything that would prohibit this.

12. Heidi, this isn't a webinar specific question, but our gifted director was told that the district should not be sending a bus to pick up the students at parochial schools and bring them to our schools for gifted services. Is there a different rule for gifted programs?

Answer: yes, our folks here tell me this is different for gifted and that no transportation should be provided.

13. The LEA representative at an IEP meeting is to have knowledge about general education curriculum, and be knowledgeable about the availability of resources of the public agency and able to commit the resources of the agency (pg 45-46 of state plan). Is that determination at the discretion of the local district, or is there DESE recommendations? Who decides a person is qualified to be the LEA? For example, a principal designates a special education teacher to act as the LEA in his/her absence?

Answer: The local school district determines who the responsible public agency representative is at the IEP meeting; that person must be aware of that status and understand their authority.

14. What if when you start the school year you do not have any private school students accessing services, how do you handle requesting release of proportionate share monies?

Answer: You have the one year carryover of funds and if in that second year you aren't able to spend, you request a release of the funds. We sent out a message in February explaining the process. Here's the SELS from last year:

<http://dese.mo.gov/divspeced/LS02.05.10-3.htm>

15. How do the errors found on an IEP that cannot be changed per a Corrective Action Plan effect my schools Compliance Rating?

Answer: If there is no context for change, this will not negatively impact your "Determinations" label.

16. On the Notice of Action - Testing - Do you have to list the tests? In our district we use the sheet that explains areas and you mark what areas you are testing and then list the possible tests you may use. Should we be listing tests on the Notice also?

Answer: see #3 above.

17. If a Para is in the regular classroom helping several students, is this considered special ed. minutes and how do you document on IEP?

Answer: If the IEP team decision is that a particular student(s) needs para support in that classroom, it would be noted on the IEP(s) as Supplementary Aids/Services. The amount, frequency and duration would be listed, and the location would be regular education classroom. These minutes would not be included in the placement percentage. The same would be true for a personal aide.

18. Referral date question: Do you take the date of referral from the First Steps transition meeting or 120 days prior to 3rd birthday? The transition meetings are happening 6-9mos prior to 3rd birthday. Just wondering how to proceed.

Answer: The date of the First Steps transition meeting is the date of the referral to ECSE. If the referral is received more than 120 days prior to the child's third birthday, the expectation is that an IEP will be in place by the child's third birthday. If the referral is received 120 days or less prior to the child's third birthday, the LEA will follow the required timelines associated with an initial evaluation. Parents with a child younger than age 3 should be referred to First Steps. School district ECSE programs have an obligation to accept and act on parent referrals for children who are within 120 days of the third birthday and should not postpone them until the child turns three.

19. Yesterday we got some information regarding the suspension of grading on portions of the MAP and EOC's. Will there be any changes to MAP-A of a similar effect?

Answer: No

20. When it comes to deciding what services to provide to parochial school kids, if you don't come close to expending those funds how can you decide, through consultation that you won't offer some services?

Answer: I don't know that you can...ultimately though, whatever decision you make, you need to make sure you are spending the proportionate share.

21. What do you do when a student's parent wants them to receive public education until age 21 but the student is earning credit and will graduate prior to age 21? Does the school have an obligation to continue to provide education?

Answer: If the student has met the credit requirements of the local school district's board policy, then the student must be graduated. The student would be the educational decision-maker assuming that he is 18 and his parents have not obtained guardianship. However, if the student and parent both believe he is not ready to graduate, you may want to be sure you feel comfortable that you have really met the transition planning and services requirements before you graduate him.

22. If you list the specific tests on the Notice of Action when you get permission for testing and later you need to change a specific assessment do you need to get a new Notice of Action signed by the parent?

Answer: You only need additional consent when you include additional AREAS for testing, not additional/other tests within the area for which you already have consent.

23. What does a district do when a student needs a deaf interpreter and the district has been unable to locate an interpreter?

Answer: You will want to clearly document that you have in good faith explored all possibilities before concluding you could not obtain an interpreter. And you will want to document that you will be offering compensatory services once an interpreter is located. The state has a state contract for interpreters; you will want to document that you were unable to contract for such services through that contract, as well as other options. Consult with the Commission for the Deaf and Hard of Hearing, as well as Missouri School for the Deaf to be sure you have really explored all options.

24. I have another question related to the behavior issue --- if the behaviors are absolutely not related to the disability - for instance student receives speech therapy for an articulation error(s) but, also exhibits behavior problems - why would the IEP team need to address this as part of the plan?

Answer: Because their behavior impedes their learning or the learning of others.

25. We had a student who met eligibility for Visually Impaired. Her IEP that was written for this school year stated that she would get 15 minutes per month of VI services from a VI teacher. The student was at the point where she had met most of her Vision goals. Her parents decided to home school her this year. What is the district's obligation toward this student now?

Answer: This scenario makes it sound as if this is a student who was no longer eligible for special education; but assuming she really is still eligible, you will want to explore

services under a Services Plan if you need to do so in order to meet your proportionate share expenditure to non public/private school kids, since homeschool is treated as a nonpublic/private school.

26. If an aide is in the regular classroom, how do you put that on the IEP?

Answer: See Answer to #17 above.

27. If a student is suspended for 2 hours for behavioral concerns, does it count as 2 hours, half a day or a full day and is there a difference when looking at elementary versus secondary.

Answer: when determining the amount of days of suspension for purposes of triggering special procedures, we do prorate the day; so 2 hours really is 2 hours and gets added up into school days.

28. Do you provide Notice of Actions for initial placement/services or when you change services to private/parochial parents?

Answer: You would have to provide Notice and get consent for initial eligibility/services, but after that I don't think a Notice for Change of Services would be required as there is no individual right to a free appropriate public education and there really is no placement for private/parochial so there wouldn't be context for a NOA Change of Placement.

29. Is there something with state law that says public school buses can't pick a student up from or take to the parochial school? I thought we could pick the student up at their home and bring them to the public school, but couldn't take them back to the parochial school?

Answer: See Answer to # 8 above. While Missouri's constitution is strict, the federal court in Missouri has indicated that such transportation between sites in order to allow the student to access the special education services they are being provided under IDEA, is permissible.

30. Can we use RTI for ELL, even though it is not yet DESE endorsed?

Answer: I am unsure what you are referring to in terms of "endorsed." The Department has endorsed, promoted, and funded use of three-tiered systems change, including RtI. Such three-tiered models address the needs of ALL kids, including kids who are English Language Learners. I think you are referring to a flowchart specific to kids who are ELL and RtI; we have not endorsed use of that chart.

31. Can you remind districts that RtI strategies and interventions are not allowable accommodations under IDEA for Grade-Level and EOC MAP?

Answer: Correct. RtI interventions for non-disabled children have nothing to do with the topic of accommodations provided to kids with disabilities.

32. ESY costs included in proportionate share? If not, is there a fund to recover ESY costs?

Answer: yes.

33. Since the nonpublic student is not entitled to FAPE, once the proportionate share funds have been expended, can the LEA then not provide transportation because there is no proportionate share money available?

Answer: No. Your planning needs to include the cost of transportation so that there is sufficient funds to cover transportation as part of the proportionate share expenditure.

34. I had several teachers go to the "Free Dyslexia Presentation" in Jeff City on Sept 26th. From what I am understanding that was put out is that Dyslexia is not a medical diagnosis and that there is a person that is not a doctor that is qualified/certified to make this diagnosis. I do understand that dyslexia is under our SLD label. In put please.

Answer: We are not positive, but we believe it does involve a medical diagnosis. It is not a category as you know, under IDEA. Our research indicates that a dyslexia diagnosis involves an evaluation of medical, cognitive, sensory-processing, educational and psychological factors. Doctors usually want the child to undergo:

- **Vision, hearing and neurological evaluations.** These evaluations can help determine whether another disorder may be causing or contributing to the child's poor reading ability.
- **A psychological assessment.** This can help determine whether social problems, anxiety or depression may be limiting the child's abilities.
- **An evaluation of educational skills.** The child may take a set of educational tests and have the process and quality of his or her reading skills analyzed.

35. When districts adopt graduation requirements that exceed the state minimum of 24 credits, can IEP teams determine that a student will graduate by earning the state required 24 credits thus waiving the additional district required credits? If yes, would this require BOE approval?

Answer: If the student's graduation is premised on meeting the credit requirements of the school district's board, then the board would have to waive the credits. The IEP team would not have authority to waive.